

1 THE STATE OF ARIZONA  
2 CITIZENS CLEAN ELECTIONS COMMISSION  
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9 REPORTER'S TRANSCRIPT OF PUBLIC MEETING  
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15 Phoenix, Arizona

16 July 21, 2011

17 9:31 a.m.  
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23 Reported By:

24 Angela Furniss Miller, RPR  
25 Certified Reporter (AZ 50127)

Miller Certified Reporting

<div>2</div> <p>1 A PUBLIC MEETING, BEFORE THE CITIZENS CLEAN ELECTIONS COMMISSION, convened at 9:31 a.m. on July 21, 2 2011, at the State of Arizona, Clean Elections 3 Commission, 1616 W. Adams, Conference Room, Phoenix, Arizona, in the presence of the following Board members:</p> <p>4 Mr. Jeff Fairman, Chairperson 5 Mr. Timothy Reckart (Telephonic) 6 Ms. Lori Daniels 7 Mr. Louis Hoffman, Acting Chairperson</p> <p>8 OTHERS PRESENT:</p> <p>9 Todd Lang, Executive Director 10 Colleen McGee, Deputy Director 11 Paula Thomas, Executive Assistant 12 Daniel Ruiz, II, Campaign Finance Manager 13 Michael Becker, Voter Education Manager 14 Steve Clawson, Moses Anshell 15 Christian Palmer, YellowSheet 16 Nancy Read, Secretary of State's Office</p> <p>17 18 19 20 21 22 23 24 25</p> <p>Miller Certified Reporting</p>	<div>3</div> <p>1 P R O C E E D I N G</p> <p>2</p> <p>3 COMMISSIONER HOFFMAN: Good morning, everyone.</p> <p>4 Welcome to the Citizens Clean Election Commission</p> <p>5 meeting.</p> <p>6 The Commission may vote to go into executive</p> <p>7 session, which will not be open to the public, for the</p> <p>8 purpose of obtaining legal advice on any item listed on</p> <p>9 the agenda, pursuant to ARS 38-431(A)(3).</p> <p>10 The -- we have in Tab 2 of our meeting minutes,</p> <p>11 the transcript of the June 30th, 2011 Commission</p> <p>12 meeting, as our minutes of the public meeting. Do I</p> <p>13 hear a motion?</p> <p>14 COMMISSIONER DANIELS: I would move that we</p> <p>15 approve the minutes of the June 30, 2011, meeting.</p> <p>16 COMMISSIONER RECKART: Second.</p> <p>17 COMMISSIONER HOFFMAN: All in favor?</p> <p>18 COMMISSIONER DANIELS: Aye.</p> <p>19 COMMISSIONER RECKART: Aye.</p> <p>20 COMMISSIONER HOFFMAN: Opposed?</p> <p>21 I guess -- I guess that passes when you</p> <p>22 have a quorum, right, even though it's two votes?</p> <p>23 MR. LANG: Yes.</p> <p>24 CHAIRPERSON FAIRMAN: Okay. So the next item</p> <p>25 on the agenda is the Executive Director report.</p> <p>Miller Certified Reporting</p>
<div>4</div> <p>1 Mr. Lang?</p> <p>2 MR. LANG: Thank you, Commissioners. Good</p> <p>3 morning.</p> <p>4 As you know, as you see in my report, there is</p> <p>5 a recall election call for District 18. There's</p> <p>6 currently litigation challenging that recall election,</p> <p>7 but as far as -- the latest I've heard, there's been no</p> <p>8 resolution of that litigation, everything is going</p> <p>9 forward at this point.</p> <p>10 You can -- both Senator Pierce and anyone who</p> <p>11 chooses to challenge him and qualifies for the ballot,</p> <p>12 can receive Clean Elections funding. They qualify in</p> <p>13 the same way that they would qualify in the 2012</p> <p>14 election, that is by gathering 220 valid slips, and</p> <p>15 turning them in within the deadline. In this case, the</p> <p>16 deadline is quick, it's August 11th, it's 30 days after</p> <p>17 the date of the election. This is all pursuant to our</p> <p>18 statutes.</p> <p>19 So they have until August 11th to qualify for</p> <p>20 Clean Elections. And to our knowledge, no one has yet</p> <p>21 begun the process of qualifying for Clean Elections</p> <p>22 funding.</p> <p>23 Our candidate -- as you know, we keep files</p> <p>24 both for candidate funding and for enforcement in our</p> <p>25 office here. Over the years we've developed quite a</p> <p>Miller Certified Reporting</p>	<div>5</div> <p>1 collection of files and, of course, we destroy them as</p> <p>2 required by our Document Retention Policy, but those</p> <p>3 particular documents stay around quite a while. We're</p> <p>4 now moving for 2012, Colleen McGee is leading us to the</p> <p>5 movement of all electronic files.</p> <p>6 Our enforcement files will remain hard copies,</p> <p>7 because, of course, there will be a lot of documents</p> <p>8 we'd received in that, in the course of an enforcement</p> <p>9 matters. But our candidate funding files will now be</p> <p>10 all electronic, which is a change. And, of course,</p> <p>11 they'll all be available as public records, and the</p> <p>12 public, you know, should see no -- no change.</p> <p>13 We are working on the candidate statement</p> <p>14 pamphlet for the legislative District 18 recall</p> <p>15 election. That's right, there will be a candidate</p> <p>16 statement pamphlet. Obviously, it will be much, much</p> <p>17 shorter than the normal candidate statement pamphlet.</p> <p>18 And we're beginning our planning for the 2012's</p> <p>19 education plan.</p> <p>20 I would also point out that there -- I think we</p> <p>21 have a record number of parties on the ballot. At least</p> <p>22 record number in recent decades. For 2012, we will</p> <p>23 have, of course, the Republicans and the Democrats, but</p> <p>24 we will also have the Green Party, the Libertarian</p> <p>25 Party, and now the American's Elect Party will be</p> <p>Miller Certified Reporting</p>

<p style="text-align: right;">6</p> <p>1 eligible for the 2012 ballot. They -- according to</p> <p>2 their information, they're non- -- they don't have a</p> <p>3 particular partisan agenda. I don't know -- in other</p> <p>4 words, I don't know if they're liberal or conservative;</p> <p>5 I don't know what their world view is, but they will be</p> <p>6 on the ballot. And thus, they will be eligible -- their</p> <p>7 candidates will be eligible for Clean Elections funding.</p> <p>8 That concludes my report.</p> <p>9 COMMISSIONER HOFFMAN: Any questions for Mr.</p> <p>10 Lang?</p> <p>11 COMMISSIONER DANIELS: Nope.</p> <p>12 COMMISSIONER HOFFMAN: Thank you, Mr. Lang.</p> <p>13 Turning to tab -- Item IV, discussion and</p> <p>14 possible action on final approval of Rule R2-20-223(A),</p> <p>15 notice of appealable agency action. Would you like to</p> <p>16 present the background and remind us of the history of</p> <p>17 this?</p> <p>18 MR. LANG: Sure.</p> <p>19 COMMISSIONER HOFFMAN: Thank you.</p> <p>20 MR. LANG: This is a final approval --</p> <p>21 actually, several of these rules are housekeeping rules,</p> <p>22 in a sense, and this is one of those. We've received no</p> <p>23 feedback on this particular rule, and that's primarily</p> <p>24 because it really doesn't have a substantive change.</p> <p>25 The addition you see there is simply clarifying</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">7</p> <p>1 language that reflects the policy we've always had in</p> <p>2 place, and it doesn't change our practice in any way.</p> <p>3 It simply just specifies the statute or rule violated</p> <p>4 and the facts constituting the violation. Just so it's</p> <p>5 clear that any sort of Respondent has -- is entitled to</p> <p>6 that information. So we'd ask that you give it final</p> <p>7 approval.</p> <p>8 COMMISSIONER HOFFMAN: Okay. So, this has</p> <p>9 passed through us previously, sent out to the public for</p> <p>10 review, no comments were received, and we're looking to</p> <p>11 approve this in all -- in final form?</p> <p>12 MR. LANG: That's correct.</p> <p>13 COMMISSIONER HOFFMAN: Any discussion or</p> <p>14 motions?</p> <p>15 COMMISSIONER DANIELS: Mr. Chairman, I will</p> <p>16 move --</p> <p>17 COMMISSIONER RECKART: Todd?</p> <p>18 COMMISSIONER DANIELS: Oh. Go ahead.</p> <p>19 MR. LANG: Yes.</p> <p>20 COMMISSIONER RECKART: Okay. What was the</p> <p>21 language before -- beforehand that this replaced? Or,</p> <p>22 again, I was trying to figure out what -- how it read</p> <p>23 beforehand.</p> <p>24 MR. LANG: It read just the way it looks</p> <p>25 without the blue language.</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">8</p> <p>1 COMMISSIONER RECKART: Okay. So, it was -- it</p> <p>2 was pretty vague then, just said "the statute or</p> <p>3 rule" --</p> <p>4 MR. LANG: That's right.</p> <p>5 COMMISSIONER RECKART: -- and didn't have any</p> <p>6 -- yeah. Okay. Thank you. I agree that the change is</p> <p>7 well needed, and so, I'll move for approval.</p> <p>8 COMMISSIONER DANIELS: Second.</p> <p>9 COMMISSIONER HOFFMAN: Okay. Any discussion</p> <p>10 beyond that?</p> <p>11 All in favor signify by saying "aye."</p> <p>12 COMMISSIONER DANIELS: Aye.</p> <p>13 COMMISSIONER RECKART: Aye.</p> <p>14 COMMISSIONER HOFFMAN: Opposed?</p> <p>15 The rule passes and staff can go forward</p> <p>16 with the publication and implementation subject to</p> <p>17 declaritizing.</p> <p>18 Turning to Item No. V, discussion and possible</p> <p>19 action on proposed changes to Commission Rule R2-20-109,</p> <p>20 use of campaign funds.</p> <p>21 MR. LANG: Thank you. Commissioners, this</p> <p>22 appears to be a, you know, a rather substantial change.</p> <p>23 And in terms of the rewriting and the moving of the --</p> <p>24 of the provisions, it is; but in terms of substance, it</p> <p>25 is not. This is simply a rewrite of the statute to make</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">9</p> <p>1 it easier to understand.</p> <p>2 We got lots of questions from candidates on</p> <p>3 this rule, and what I did was we separated reporting by</p> <p>4 traditional candidates from reporting and requirements</p> <p>5 of participating candidates. And so the substance</p> <p>6 really hasn't changed. You'll see there's a new Item</p> <p>7 (D), which is all about what participating candidates</p> <p>8 have to do. We just simply divided it out, and moved</p> <p>9 some of the stuff that you see deleted earlier into that</p> <p>10 provision.</p> <p>11 For instance, at 109(A)(4) on the first page,</p> <p>12 it's been moved to (D)(3) of the new text, for clarity,</p> <p>13 which is on, you know, the last page -- or, second --</p> <p>14 the last full page of the document, that goes into the</p> <p>15 final page.</p> <p>16 So, in a sense this has just been rewritten</p> <p>17 to -- to add clarity and to promote understanding. And</p> <p>18 we'd ask that you approve it only for notice and</p> <p>19 comment. This is the first go around, and so obviously</p> <p>20 we'll have a nice opportunity to get feedback from</p> <p>21 candidates and consultants and the parties over the next</p> <p>22 60 days.</p> <p>23 COMMISSIONER HOFFMAN: Do we need a couple</p> <p>24 moments to take a look or -- or are there any questions?</p> <p>25 COMMISSIONER RECKART: Oh, just a couple</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">10</p> <p>1 things. So, again, just as I was going through it,  2 Todd, I assume, then, that the whole reference here to  3 "software provider approved by the Secretary of State"  4 is no longer necessary because we are talking about an  5 Internet-based finance reporting system that's already  6 in place?  7 MR. LANG: That's right. But you also see,  8 Commissioner, at the end of that first paragraph, at the  9 end of (A) there, it does say, "Secretary of State's  10 Internet-based finance system." We just simply moved  11 it.  12 COMMISSIONER RECKART: Okay. Okay. Thank you.  13 MR. LANG: We're still using their software.  14 COMMISSIONER RECKART: All right.  15 COMMISSIONER HOFFMAN: What happened --  16 MR. LANG: And we met with them yesterday  17 regarding another matter over software, and we continue  18 to have a great relationship with them.  19 COMMISSIONER RECKART: And just because I'm a  20 little dense, I have another question. So, really, the  21 things that have been crossed out here in (A)(4), which  22 is the one you pointed out in Section (B), really relate  23 to traditional candidates versus participating  24 candidates. And (B) is focused just on participating  25 candidates, the stuff that is crossed out, really has  Miller Certified Reporting</p>	<p style="text-align: right;">11</p> <p>1 been sort of re- -- reconfigured in what is now (B). Is  2 that what really what we're doing here?  3 MR. LANG: For participating candidates, yes.  4 There's been some other changes, for instance at (A)(1),  5 the last sentence is taken out because we're not -- we  6 don't provide equalizing funds.  7 COMMISSIONER RECKART: Right.  8 MR. LANG: And there have been changes of that  9 sort as well.  10 COMMISSIONER RECKART: Okay.  11 COMMISSIONER HOFFMAN: May I ask, Mr. Lang,  12 where did "amended reports" in Section (C) go? And the  13 participating candidate's reporting requirement -- I'm  14 sorry, the independent expenditures?  15 MR. LANG: The amended reports -- I -- I don't  16 think we left that in there, but -- because I didn't  17 think it was necessary. But -- what was the other  18 question?  19 COMMISSIONER HOFFMAN: Independent  20 expenditures.  21 MR. LANG: Well, two things about that: One,  22 we're not issuing matching funds; and, two, the statute  23 regarding independent expenditures is sufficient to get  24 the information. In other words, all the requirements  25 of the statute for independent expenditure committees  Miller Certified Reporting</p>
<p style="text-align: right;">12</p> <p>1 are still in place, and I felt the rule wasn't  2 necessary.  3 The reason we needed copies in all that was for  4 purposes of matching funds.  5 COMMISSIONER RECKART: Okay. That helps.  6 Thank you.  7 MR. LANG: You know, in other -- one of the  8 toughest jobs you as commissioners had was to determine  9 what constitutes express advocacy for purposes of  10 matching funds, we no longer have that obligation.  11 COMMISSIONER RECKART: And -- and, then, Todd,  12 the part here with regard to amending reports, that is  13 out as well, but I don't see a corresponding...  14 MR. LANG: Yeah. That -- that one I didn't  15 keep in, simply because I didn't think it was necessary,  16 but we certainly can leave it in if you prefer. It  17 would be -- we could call it -- we could keep it as (C)  18 actually -- no, we couldn't. That's transportation.  19 COMMISSIONER DANIELS: Mr. Chairman, Todd --  20 COMMISSIONER RECKART: Could make it (B) or --  21 MR. LANG: It gets --  22 COMMISSIONER DANIELS: -- can you -- can you  23 explain your reasoning, why we did need amended reports  24 and why we don't now?  25 MR. LANG: Again, we didn't keep it in because  Miller Certified Reporting</p>	<p style="text-align: right;">13</p> <p>1 we didn't think it was necessary, because everyone knows  2 how to amend the reports. The whole purpose of the rule  3 was, if there's something wrong that results in a -- a  4 mistake or -- or a correction, a necessary correction,  5 for matching funds, that's why the amending reports rule  6 was so important, so that we could be sure to get the  7 proper matching funds to candidates.  8 We no longer have the obligation to issue  9 matching funds, and so this rule regarding amending  10 reports wasn't necessary. This is all part of getting  11 rid of rules that we don't need because we no longer  12 issue matching funds.  13 COMMISSIONER HOFFMAN: How about if we look at  14 the first sentence of part (C) that says -- that  15 establishes an obligation on the candidates to amend the  16 campaign finance report if they determine that something  17 is inaccurate.  18 MR. LANG: That -- that already exists, I  19 think, under -- under Article 1. You know, you have to  20 -- one of the requirements is that you file accurate  21 campaign finance reports.  22 COMMISSIONER HOFFMAN: Under Article 1 of --  23 of -- of --  24 MR. LANG: Of our election statutes. In other  25 words, the -- the -- the traditional candidate reporting  Miller Certified Reporting</p>

<p style="text-align: right;">14</p> <p>1 requirements require accurate reports, and you are</p> <p>2 obligated to correct them.</p> <p>3 The reason we had this in here was so that they</p> <p>4 understood that specifically for our purposes, we want</p> <p>5 them fixed right away, because we need to issue matching</p> <p>6 funds right away. And now that we don't issue</p> <p>7 matching -- that -- that was the whole reason we had</p> <p>8 this rule was matching funds, the sole reason. And now</p> <p>9 that we don't issue matching funds, we don't need to</p> <p>10 regulate it in that fashion. It's more of a Secretary</p> <p>11 of State obligation.</p> <p>12 COMMISSIONER HOFFMAN: You're talking about</p> <p>13 Article 1 of the -- of --</p> <p>14 MR. LANG: Title 16.</p> <p>15 COMMISSIONER HOFFMAN: Right. Title 16,</p> <p>16 Chapter 6.</p> <p>17 MR. LANG: The -- right. The traditional.</p> <p>18 COMMISSIONER HOFFMAN: The 16-900 -- or, 901 et</p> <p>19 seq.</p> <p>20 MR. LANG: Yeah. The election laws that exist</p> <p>21 outside of the Clean Elections Act.</p> <p>22 COMMISSIONER HOFFMAN: Does that apply to -- to</p> <p>23 reports required only under Article 2?</p> <p>24 MR. LANG: You know, I haven't thought about</p> <p>25 it, but I don't know why it wouldn't.</p> <p style="text-align: right;">Miller Certified Reporting</p>	<p style="text-align: right;">15</p> <p>1 COMMISSIONER HOFFMAN: Well, that's what it</p> <p>2 says.</p> <p>3 MR. LANG: I don't know the answer to that,</p> <p>4 Commissioner.</p> <p>5 COMMISSIONER HOFFMAN: Do you happen to know</p> <p>6 where the --</p> <p>7 MR. LANG: I didn't bring my Article 1 with me.</p> <p>8 COMMISSIONER RECKART: I guess, Todd, my</p> <p>9 question really comes down to, it's nice to have in, you</p> <p>10 know, in -- in the regulations the -- or, in the</p> <p>11 rules -- the specified, at least, the process for</p> <p>12 amendment. That's why -- I mean, being a guy who always</p> <p>13 makes mistakes, never gets it done right the first time,</p> <p>14 I appreciate the fact that we're laying it out here.</p> <p>15 And maybe the timing here isn't what is critical, but we</p> <p>16 would still want to have accurate reports, even -- but I</p> <p>17 understand what you're saying, I mean, I'm just trying</p> <p>18 to --</p> <p>19 MR. LANG: Okay.</p> <p>20 COMMISSIONER RECKART: -- make it as easy for</p> <p>21 everyone else to follow. So, that's all I'm wondering.</p> <p>22 MR. LANG: Well, Commissioners, what we can do</p> <p>23 then, Commissioners Reckart and Hopper -- Hoffman, we</p> <p>24 can just take (C), the first paragraph before (C)(1),</p> <p>25 and turn it into (A)(6). That's simply another facet of</p> <p style="text-align: right;">Miller Certified Reporting</p>
<p style="text-align: right;">16</p> <p>1 the reporting requirements. Because (A) is all about</p> <p>2 reporting of transactions and it, you know, specifies</p> <p>3 all the detail, and then you could make (A)(6) simply</p> <p>4 sort of nice, precatory language about amending your</p> <p>5 reports.</p> <p>6 COMMISSIONER HOFFMAN: I think --</p> <p>7 COMMISSIONER DANIELS: We would do (A)(5) --</p> <p>8 COMMISSIONER HOFFMAN: (A)(5).</p> <p>9 COMMISSIONER DANIELS: -- because you already</p> <p>10 deleted (5). You deleted (4) maybe --</p> <p>11 MR. LANG: I deleted (4) and forgot to --</p> <p>12 COMMISSIONER DANIELS: Yeah.</p> <p>13 MR. LANG: -- make it clear that (5) became</p> <p>14 (4). You're right.</p> <p>15 COMMISSIONER DANIELS: So, it should be (A)(5).</p> <p>16 COMMISSIONER HOFFMAN: I -- I think that what</p> <p>17 it should say is, again, it should also say that, you</p> <p>18 know: The candidate shall amend the -- the report to</p> <p>19 provide accurate information as soon as reasonably</p> <p>20 possible. You know, so that there's a obligation to do</p> <p>21 it promptly and not just to do it at any point.</p> <p>22 MR. LANG: Okay.</p> <p>23 COMMISSIONER HOFFMAN: Why don't we publish it</p> <p>24 that way and -- and I, certainly -- I like your idea of</p> <p>25 making it an (A)(5).</p> <p style="text-align: right;">Miller Certified Reporting</p>	<p style="text-align: right;">17</p> <p>1 COMMISSIONER RECKART: Yeah.</p> <p>2 MR. LANG: Okay.</p> <p>3 COMMISSIONER RECKART: Ditto.</p> <p>4 MR. LANG: That's what we will do. Thank you.</p> <p>5 COMMISSIONER DANIELS: Mr. Chairman, would you</p> <p>6 like a motion?</p> <p>7 COMMISSIONER HOFFMAN: Yeah. If there are any</p> <p>8 other questions or -- or comments on -- on -- that need</p> <p>9 to be discussed, the floor is open. So, the floor is</p> <p>10 open for a motion as well.</p> <p>11 COMMISSIONER DANIELS: Mr. Chairman, I would</p> <p>12 move the proposed changes to Commission Rule 20 --</p> <p>13 excuse me. R2-20-109, with the addition of adding</p> <p>14 (A)(5) and the language change, be put out for notice</p> <p>15 and comment.</p> <p>16 MR. COLLINS: Commissioner Daniels, your motion</p> <p>17 would be that -- that the language that's currently in</p> <p>18 (C)(1) be transferred to (A)(5)?</p> <p>19 COMMISSIONER DANIELS: Yes. That --</p> <p>20 COMMISSIONER HOFFMAN: With the modification</p> <p>21 that we discussed.</p> <p>22 COMMISSIONER RECKART: It would be (C)(1) and</p> <p>23 -- I mean, all of (C).</p> <p>24 COMMISSIONER DANIELS: All of (C), yeah, it</p> <p>25 would be going into -- no.</p> <p style="text-align: right;">Miller Certified Reporting</p>

<p style="text-align: right;">18</p> <p>1 MR. LANG: No.</p> <p>2 COMMISSIONER HOFFMAN: The beginning portion --</p> <p>3 the introductory portion of (C). Not (C)(1) and (C)(2),</p> <p>4 but (C) -- (C) plain.</p> <p>5 COMMISSIONER DANIELS: Just (C). Yeah.</p> <p>6 COMMISSIONER RECKART: There you go. Yes.</p> <p>7 MR. COLLINS: Just so that the record is clear,</p> <p>8 can I ask you to -- I would suggest you might -- it</p> <p>9 might be better to withdraw and start over.</p> <p>10 COMMISSIONER DANIELS: Mr. Chairman, I'll</p> <p>11 withdraw my motion.</p> <p>12 COMMISSIONER HOFFMAN: Thank you. Could --</p> <p>13 could you hold on just a second, Lori.</p> <p>14 Mr. Lang, on the first page of the report, (A)</p> <p>15 -- part (A)(3), I just -- I noticed a grammatical --</p> <p>16 minor grammatical mistake. It says "a candidate" and it</p> <p>17 says "on their behalf." "Candidate" being singular it</p> <p>18 should say "his or her," or should say "candidates," or</p> <p>19 one of those. The word "their" --</p> <p>20 MR. LANG: My suggestion is we change</p> <p>21 "candidate." Make "candidate" -- get rid of "a" and</p> <p>22 make it plural and then just keep "their."</p> <p>23 COMMISSIONER HOFFMAN: So --</p> <p>24 MR. LANG: "Candidates may authorize an agent</p> <p>25 to purchase goods or services on their behalf."</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">19</p> <p>1 COMMISSIONER HOFFMAN: Provided that --</p> <p>2 MR. LANG: Provided that -- oh. Then, we got</p> <p>3 to change it all the way through. Okay.</p> <p>4 COMMISSIONER HOFFMAN: Then there's a</p> <p>5 "candidates" later, so I'm not sure it matters.</p> <p>6 MR. LANG: We'll change it grammatically so</p> <p>7 it's "candidates" all the way through.</p> <p>8 COMMISSIONER HOFFMAN: Okay. And did -- I</p> <p>9 also -- just another minor matter, at the end of (D) --</p> <p>10 the second sentence of (D), starts out: "Candidates may</p> <p>11 make a joint expenditure on behalf of one or more other</p> <p>12 campaigns."</p> <p>13 That doesn't -- is that part of the agency</p> <p>14 rule, Section (C), or is it -- or is it a separate</p> <p>15 thought that might be helpful to candidates to break it</p> <p>16 out into another paragraph while we're messing around?</p> <p>17 MR. LANG: You want to -- are you asking</p> <p>18 whether we should breakdown (D)?</p> <p>19 COMMISSIONER HOFFMAN: Yeah. In other words,</p> <p>20 (3) refers to "agency," but has some conditions, (A)</p> <p>21 through (D), provided that, you know, that are -- that</p> <p>22 are restrictions on agency.</p> <p>23 MR. LANG: Right.</p> <p>24 COMMISSIONER HOFFMAN: I'm asking whether the</p> <p>25 last sentence of part (D), which talks about joint</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">20</p> <p>1 expenditures on behalf of more than one campaign, is --</p> <p>2 is part of the authorization of agents -- a condition on</p> <p>3 authorizing agent, or whether it's an entirely separate</p> <p>4 thought.</p> <p>5 MR. LANG: Well, you're -- thematically, it</p> <p>6 fits with the rest of the -- this part; but, you're</p> <p>7 right, it's not a condition.</p> <p>8 COMMISSIONER HOFFMAN: So, one way to do that</p> <p>9 would be to make that just number (4), that sentence.</p> <p>10 MR. LANG: That -- that's fine. And then we</p> <p>11 will make --</p> <p>12 COMMISSIONER HOFFMAN: Break into a number (4),</p> <p>13 and that will keep candidates -- that might be helpful</p> <p>14 to candidates to see it as a separate --</p> <p>15 MR. LANG: Okay. We'll make that (4) and then</p> <p>16 (5) stays (5) instead of moving to (4).</p> <p>17 COMMISSIONER DANIELS: Mr. Chairman, Todd --</p> <p>18 COMMISSIONER HOFFMAN: And the new one will be</p> <p>19 (6) --</p> <p>20 COMMISSIONER DANIELS: Mr. Chairman, Todd, is</p> <p>21 it necessary we pass this at this meeting today? Could</p> <p>22 we table this and bring it back at our next meeting with</p> <p>23 all the changes we've talked about, so that it reads a</p> <p>24 little bit more clear.</p> <p>25 MR. LANG: Sure.</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">21</p> <p>1 COMMISSIONER DANIELS: Unless -- unless there's</p> <p>2 a timing issue here that I'm not aware of.</p> <p>3 MR. LANG: Well, their -- the only time --</p> <p>4 the -- the requirement is that it be final approval by</p> <p>5 the end of the year.</p> <p>6 COMMISSIONER DANIELS: Uh-huh.</p> <p>7 MR. LANG: But the election cycle begins in</p> <p>8 August.</p> <p>9 COMMISSIONER DANIELS: Okay.</p> <p>10 MR. LANG: Because of the State -- because of</p> <p>11 the Corporation Commission races. So, we'd like to have</p> <p>12 the rule in place as quickly as possible but, obviously,</p> <p>13 these -- these changes are not substantive, so it won't</p> <p>14 be a disadvantage to any candidate. So, we can wait if</p> <p>15 you like.</p> <p>16 COMMISSIONER HOFFMAN: Well, Commissioner</p> <p>17 Daniels, I believe Mr. Lang has a handwritten version</p> <p>18 sitting there, and one way to do this would be to just</p> <p>19 make a motion to -- if you go ahead and check that, it's</p> <p>20 possible to make a -- your motion, simply ask that it be</p> <p>21 published in the form stated in Mr. Daniels --</p> <p>22 Mr. Lang's notes, and then you don't have to make a</p> <p>23 really long motion.</p> <p>24 COMMISSIONER DANIELS: Mr. Hoffman, let me --</p> <p>25 let me clarify, let me go through what I find is the</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">22</p> <p>1 changes right now, and that way I make sure that I</p> <p>2 understand.</p> <p>3 We are changing under R2-20-109(A), we're</p> <p>4 changing grammatically (3) to "candidates" plural. And</p> <p>5 then when you're under (D), where the second sentence</p> <p>6 "candidates," we're going to make that (E); is that</p> <p>7 correct?</p> <p>8 COMMISSIONER HOFFMAN: No.</p> <p>9 MR. LANG: I think all of (D) is going to be</p> <p>10 (4).</p> <p>11 COMMISSIONER DANIELS: Oh.</p> <p>12 COMMISSIONER HOFFMAN: No. The second sentence</p> <p>13 of (D) is going to be number (4).</p> <p>14 COMMISSIONER DANIELS: Okay. Second sentence</p> <p>15 of (D) is going to be (4).</p> <p>16 COMMISSIONER HOFFMAN: Oh. I'm sorry. I'm</p> <p>17 sorry. All of --</p> <p>18 MR. LANG: All of (D).</p> <p>19 COMMISSIONER HOFFMAN: All of (D) is going to</p> <p>20 be number (4).</p> <p>21 COMMISSIONER DANIELS: Is going to be number</p> <p>22 (4), okay.</p> <p>23 COMMISSIONER HOFFMAN: Right. Sorry about</p> <p>24 that.</p> <p>25 COMMISSIONER DANIELS: And then we're going to</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">23</p> <p>1 take --</p> <p>2 MR. LANG: (C).</p> <p>3 COMMISSIONER DANIELS: -- (C) and change it to</p> <p>4 (A)(5)?</p> <p>5 MR. LANG: (A)(6).</p> <p>6 COMMISSIONER HOFFMAN: It will be (6) now.</p> <p>7 COMMISSIONER DANIELS: Okay. Because we just</p> <p>8 added -- all right.</p> <p>9 (Whereupon Chairperson Fairman is present at</p> <p>10 9:54 a.m.)</p> <p>11</p> <p>12 COMMISSIONER HOFFMAN: And there will be a "as</p> <p>13 soon as possible."</p> <p>14 COMMISSIONER DANIELS: Yes. And the words --</p> <p>15 COMMISSIONER HOFFMAN: What is it? As soon</p> <p>16 as -- what is it? Reasonable? Reasonably?</p> <p>17 MR. LANG: "As soon as possible," I think is</p> <p>18 sufficient.</p> <p>19 COMMISSIONER HOFFMAN: Okay. And then what was</p> <p>20 (C)(1) and (2) are going to remain deleted -- okay.</p> <p>21 COMMISSIONER DANIELS: So, legal counsel here,</p> <p>22 if I make the motion to do --</p> <p>23 COMMISSIONER HOFFMAN: What you just described.</p> <p>24 COMMISSIONER DANIELS: -- to put out for the</p> <p>25 notice and comment what I just described, will that --</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">24</p> <p>1 MR. COLLINS: I think the record will be clear</p> <p>2 and the changes will be made in the -- in the -- in the</p> <p>3 document.</p> <p>4 COMMISSIONER DANIELS: Okay. Then,</p> <p>5 Mr. Chairman, I would make a motion that we put out for</p> <p>6 notice and comment, the proposed Commission rule changes</p> <p>7 to R2-20-109 in the way that was just stated throughout</p> <p>8 this conversation.</p> <p>9 CHAIRPERSON FAIRMAN: Do we have a second?</p> <p>10 COMMISSIONER RECKART: Second.</p> <p>11 CHAIRPERSON FAIRMAN: Okay. We have a motion</p> <p>12 and a second, all in favor signify by saying "aye."</p> <p>13 COMMISSIONER DANIELS: Aye.</p> <p>14 COMMISSIONER RECKART: Aye.</p> <p>15 COMMISSIONER HOFFMAN: Aye.</p> <p>16 CHAIRPERSON FAIRMAN: Any opposed? No.</p> <p>17 Thank you very much.</p> <p>18 COMMISSIONER RECKART: Welcome, Jeff.</p> <p>19 CHAIRPERSON FAIRMAN: Thank you very much. I</p> <p>20 apologize for being late. Actually woke up from my nap</p> <p>21 and, you know, here I was, so.</p> <p>22 Now, it appears as though we are now on</p> <p>23 Item VI; is that correct?</p> <p>24 COMMISSIONER HOFFMAN: Yes, sir.</p> <p>25 COMMISSIONER DANIELS: That is correct.</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">25</p> <p>1 CHAIRPERSON FAIRMAN: Okay. Very good. Todd,</p> <p>2 would you like to get us started, please.</p> <p>3 MR. LANG: Thank you, Mr. Chair, Commissioners.</p> <p>4 This Item -- Agenda Item VI, is a -- a series of</p> <p>5 proposals designed to streamline the rules to delete</p> <p>6 requirements related to issuance of matching funds.</p> <p>7 Given the Supreme Court's decision -- I almost said the</p> <p>8 McComish case, but what's it called now? It's --</p> <p>9 MR. COLLINS: Well, it's -- it's -- it's --</p> <p>10 there's McComish and then there's the Arizona Free</p> <p>11 Enterprise --</p> <p>12 MR. LANG: Freedom PAC.</p> <p>13 MR. COLLINS: Yeah.</p> <p>14 MR. LANG: In America -- Chamber of Commerce --</p> <p>15 I don't know. Chamber of Commerce of America, whatever</p> <p>16 it is. Freedom PAC.</p> <p>17 So, the first one is simply a reference to</p> <p>18 election cycle, and the reason we -- this -- this</p> <p>19 definition will change is simply because the date has</p> <p>20 changed under statute. And so, that one is not related</p> <p>21 to issuance of matching funds directly, but it's</p> <p>22 clarifying -- I mean, it gets rid of that definition</p> <p>23 because it's incorrect.</p> <p>24 COMMISSIONER HOFFMAN: I'm sorry. You are</p> <p>25 looking -- you're referring to the first page?</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">26</p> <p>1 MR. LANG: 104(8).</p> <p>2 COMMISSIONER HOFFMAN: Item VI(A).</p> <p>3 MR. LANG: Oh. I -- was I on VI(B)?</p> <p>4 COMMISSIONER HOFFMAN: I'm not sure. I was</p> <p>5 trying to figure out where you were.</p> <p>6 MR. LANG: Yeah. VI(A).</p> <p>7 COMMISSIONER HOFFMAN: VI(A). Thank you.</p> <p>8 COMMISSIONER DANIELS: And Mr. Chairman, do you</p> <p>9 want to take each one of these individually?</p> <p>10 CHAIRPERSON FAIRMAN: Well, I -- I --</p> <p>11 COMMISSIONER DANIELS: It might be easier.</p> <p>12 CHAIRPERSON FAIRMAN: It might be easier. I'm</p> <p>13 thinking -- I'm looking at all of these, and they are</p> <p>14 very much interrelated. But, I think we're going to --</p> <p>15 I would like to listen to the entire thing at once and</p> <p>16 then take the vote separately, if we could --</p> <p>17 COMMISSIONER DANIELS: That's fine.</p> <p>18 CHAIRPERSON FAIRMAN: -- to see how it fits</p> <p>19 into context.</p> <p>20 MR. LANG: Well, okay. And the next one, is</p> <p>21 104(8), we removed the reference to equalizing funds and</p> <p>22 simply say "primary and general election funding." In</p> <p>23 other words, a participating candidate who's entitled to</p> <p>24 be funded.</p> <p>25 CHAIRPERSON FAIRMAN: Please feel free, as we</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">27</p> <p>1 go through each one of these, if you have questions on</p> <p>2 that individual item, that's the time to ask them.</p> <p>3 COMMISSIONER HOFFMAN: Oh. Okay.</p> <p>4 CHAIRPERSON FAIRMAN: We'd liked to at least go</p> <p>5 through them each individually and then come back to</p> <p>6 votes.</p> <p>7 MR. LANG: Okay.</p> <p>8 COMMISSIONER HOFFMAN: So, you want to have</p> <p>9 discussion on Item VI(A) now and then...</p> <p>10 CHAIRPERSON FAIRMAN: Yes.</p> <p>11 COMMISSIONER HOFFMAN: Okay. So on VI(A), Mr.</p> <p>12 Lang, why not just say -- strike the "for the purpose of</p> <p>13 providing equalizing funds," and just say "election</p> <p>14 cycle means the time period"?</p> <p>15 I mean, is there no other place where the term,</p> <p>16 "election cycle" might be helpful to have defined in our</p> <p>17 rules?</p> <p>18 MR. LANG: Sure. We could change the</p> <p>19 definition to what it currently is.</p> <p>20 What's the number now?</p> <p>21 MS. MCGEE: It was -- it says right here. It</p> <p>22 was 21 days and they moved it to 51 days, and then we</p> <p>23 were getting rid of this just because it refers to just</p> <p>24 the equalizing funds.</p> <p>25 MR. LANG: Right.</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">28</p> <p>1 COMMISSIONER DANIELS: So in other areas in --</p> <p>2 in our rules it already says the 51 days, so this would</p> <p>3 be redundant.</p> <p>4 MS. MCGEE: That is correct.</p> <p>5 MR. LANG: So, we can keep it in with the</p> <p>6 correct number, it went from 21 to 51, or we can just</p> <p>7 delete it, because the purpose of it was -- was simply</p> <p>8 to clarify about election cycle when it comes to elect-</p> <p>9 -- when it comes to equalizing funds. That's what --</p> <p>10 that was the genesis.</p> <p>11 COMMISSIONER HOFFMAN: Sure. But is -- did</p> <p>12 anyone check to see whether there's no other reference</p> <p>13 to "election cycle" anywhere else? I mean, if not, I</p> <p>14 would say we might as well just leave it and --</p> <p>15 CHAIRPERSON FAIRMAN: But I understood you just</p> <p>16 to say that there was a reference somewhere else to the</p> <p>17 51 days.</p> <p>18 Is that -- is that the question, Louis? Are we</p> <p>19 repeating ourselves or does this add value by simply</p> <p>20 making the amendment?</p> <p>21 COMMISSIONER HOFFMAN: Yeah. I mean, I</p> <p>22 don't -- I don't have a problem if it had no -- if there</p> <p>23 was no reference --</p> <p>24 COMMISSIONER DANIELS: It's --</p> <p>25 COMMISSIONER HOFFMAN: Well, here -- here, like</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">29</p> <p>1 there's a -- I just happened to spot one. So R-20-110</p> <p>2 [sic], says: "During an election cycle, each</p> <p>3 participating and non-participating candidate shall</p> <p>4 conduct all campaign financial activity through a single</p> <p>5 current election campaign account." So there's an</p> <p>6 example where the definition uses the term "election</p> <p>7 cycle," and we might as well leave a definition of</p> <p>8 election cycle in here just to say --</p> <p>9 MR. LANG: No. And the reason -- I'm sorry,</p> <p>10 Commissioner.</p> <p>11 COMMISSIONER HOFFMAN: No. Go ahead.</p> <p>12 MR. LANG: The reason is "election cycle" is</p> <p>13 defined by stat- -- defined by statute, and it means</p> <p>14 something different than it means here. This is simply</p> <p>15 for matching funds, because matching funds are only</p> <p>16 available during a certain part of the election cycle.</p> <p>17 If you look at 16-961(B), it defines election</p> <p>18 cycle -- the statute defines it -- and it's much,</p> <p>19 much -- it's the whole time. It's between elections.</p> <p>20 It's all the period between elections.</p> <p>21 COMMISSIONER HOFFMAN: Okay. Then I understand</p> <p>22 and -- and what you're saying make sense. Thank you for</p> <p>23 clarifying that.</p> <p>24 MR. LANG: I should -- I should have been more</p> <p>25 clear from the start.</p> <p style="text-align: center;">Miller Certified Reporting</p>



<p style="text-align: center;">30</p> <p>1 COMMISSIONER HOFFMAN: No, no. It's -- it's --</p> <p>2 COMMISSIONER RECKART: So, Todd, then the -- up</p> <p>3 above in 2101, "The following should apply to the</p> <p>4 chapter," is why it's limited to the matching fund</p> <p>5 context. So, that's -- I think that's what I</p> <p>6 understand. And I'm fine with what you said, then.</p> <p>7 CHAIRPERSON FAIRMAN: Does anyone have anymore</p> <p>8 questions on R2-20-101? If not, let's go on to</p> <p>9 R2-20-104.</p> <p>10 MR. LANG: Again, we've removed "equalizing</p> <p>11 payments" and -- and replaced it with "primary and</p> <p>12 general election funding."</p> <p>13 COMMISSIONER HOFFMAN: This is in --</p> <p>14 MR. LANG: 104 No. (A).</p> <p>15 COMMISSIONER HOFFMAN: So this is actually</p> <p>16 (C)(8), correct?</p> <p>17 MR. LANG: That sounds right.</p> <p>18 COMMISSIONER DANIELS: Yes, it is. It's on</p> <p>19 page 32.</p> <p>20 MR. LANG: We simply put the provisions we were</p> <p>21 taking out. We should have probably mapped it out for</p> <p>22 you a little better.</p> <p>23 CHAIRPERSON FAIRMAN: Everything is clear</p> <p>24 enough?</p> <p>25 Okay. Let's go to R2-20-107 regarding</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: center;">31</p> <p>1 candidate debates.</p> <p>2 MR. LANG: This is Tab (C). One of the</p> <p>3 penalties for failure to participate was no matching</p> <p>4 funds. We're removing that penalty for obvious reasons.</p> <p>5 That's at 107(E).</p> <p>6 COMMISSIONER HOFFMAN: Just a second. Okay.</p> <p>7 CHAIRPERSON FAIRMAN: Okay.</p> <p>8 MR. LANG: 110.</p> <p>9 CHAIRPERSON FAIRMAN: Yes.</p> <p>10 MR. LANG: Rule 110, which is at Tab (D). As</p> <p>11 you know, your -- the candidates are required by statute</p> <p>12 to have -- conduct all their campaign activities through</p> <p>13 one account. This rule simply says that if you don't do</p> <p>14 that, among the other penalties, one of the things we</p> <p>15 can do is consider all those extra accounts for purposes</p> <p>16 of matching funds. In other words, if you have a -- a</p> <p>17 future election account or the like, we don't need that</p> <p>18 because we are not issuing matching funds. So, we ask</p> <p>19 you that you approve the deletion of 110(A) and the</p> <p>20 according --</p> <p>21 COMMISSIONER HOFFMAN: That seems to be 110(B)</p> <p>22 on the booklet I have here; is that -- is that right?</p> <p>23 MR. LANG: That sounds right.</p> <p>24 COMMISSIONER DANIELS: Yeah. It is.</p> <p>25 MR. LANG: Yes. It's (B). So, what we would</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: center;">32</p> <p>1 do, and I apologize for that, we'd remove (B), and then</p> <p>2 (C) would become (B), and (D) would become (C).</p> <p>3 COMMISSIONER HOFFMAN: Right. I assume all the</p> <p>4 renumbering is --</p> <p>5 MR. LANG: Yes.</p> <p>6 COMMISSIONER DANIELS: Conform.</p> <p>7 COMMISSIONER HOFFMAN: -- to conform and not</p> <p>8 necessarily --</p> <p>9 MR. LANG: No.</p> <p>10 COMMISSIONER HOFFMAN: Okay.</p> <p>11 CHAIRPERSON FAIRMAN: Okay. 112, I believe.</p> <p>12 MR. LANG: The -- 112 was a nice rewrite of</p> <p>13 a -- a complicated rule regarding the exceptions to</p> <p>14 express advocacy and contribution -- expenditure and</p> <p>15 contribution, and it was the result -- it was a nice</p> <p>16 refinement of a -- the prior rule. And so, it's a shame</p> <p>17 that we have to get rid of it, but the purpose of the</p> <p>18 rule was for issuance of matching funds, and for a</p> <p>19 determination of whether party activities triggered</p> <p>20 matching funds. As you know, that was one of the more</p> <p>21 contested issues that would come before the Commission</p> <p>22 during election cycles.</p> <p>23 We no longer need this because we no longer</p> <p>24 issue matching funds.</p> <p>25 CHAIRPERSON FAIRMAN: I do recall all the hours</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: center;">33</p> <p>1 that we spent on that in refining it, so that's -- it</p> <p>2 must have been somewhat painful to redline that, I'm</p> <p>3 guessing.</p> <p>4 MR. LANG: If -- if the, you know, it's</p> <p>5 actually a useful guide, but it -- it really is an</p> <p>6 Article 1 issue and -- and not our issue now that</p> <p>7 matching funds are no longer.</p> <p>8 CHAIRPERSON FAIRMAN: Okay. Any other</p> <p>9 question -- any questions on 112 before we go to 113?</p> <p>10 COMMISSIONER HOFFMAN: Yes. Is there --</p> <p>11 CHAIRPERSON FAIRMAN: Go ahead.</p> <p>12 COMMISSIONER HOFFMAN: -- any reporting</p> <p>13 requirement that would be necessary for a political</p> <p>14 party if they were performing -- if they chose to</p> <p>15 perform express advocacy?</p> <p>16 MR. LANG: Yeah. They -- they would report as</p> <p>17 any other committee.</p> <p>18 COMMISSIONER HOFFMAN: Only under --</p> <p>19 MR. LANG: They don't -- they're not --</p> <p>20 COMMISSIONER HOFFMAN: -- Article 1 or also</p> <p>21 under -- under our statute.</p> <p>22 MR. LANG: Well, Article 1 is the -- is the</p> <p>23 article that governs reporting, so it would be under</p> <p>24 both. But Article --</p> <p>25 COMMISSIONER HOFFMAN: There are Article 2</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">34</p> <p>1 reports.</p> <p>2 MR. LANG: You mean the triggers?</p> <p>3 COMMISSIONER HOFFMAN: Well, what used to be</p> <p>4 called the trigger reports --</p> <p>5 MR. LANG: Well, they're still called the</p> <p>6 triggers --</p> <p>7 COMMISSIONER HOFFMAN: We probably should call</p> <p>8 them something else now, but...</p> <p>9 MR. LANG: Yeah. They -- they're still</p> <p>10 obligated to report those.</p> <p>11 COMMISSIONER HOFFMAN: So, is this definition</p> <p>12 helpful to determine whether they need to report it on</p> <p>13 one of our reports?</p> <p>14 MR. LANG: Yes, it is. But it -- because</p> <p>15 it's -- yeah. It -- it's helpful in the unlikely</p> <p>16 circumstance that the party would engage in something, a</p> <p>17 communication that might meet the definition -- that</p> <p>18 might go outside the exceptions that we've created. The</p> <p>19 reason we created this guideline is -- is because</p> <p>20 matching funds were so important to campaigns. Now that</p> <p>21 matching funds aren't issued, our need to regulate these</p> <p>22 sorts of communications is -- is -- is reduced.</p> <p>23 COMMISSIONER HOFFMAN: Well, let me --</p> <p>24 MR. LANG: And it's primarily the bailiwick of</p> <p>25 the Secretary of State.</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">35</p> <p>1 COMMISSIONER HOFFMAN: Let me ask you this,</p> <p>2 though: Are they -- do these set up a state -- a set of</p> <p>3 safe harbors, in effect?</p> <p>4 MR. LANG: Yes.</p> <p>5 COMMISSIONER HOFFMAN: So, what this does is it</p> <p>6 tells the parties if you stay within the bounds of this</p> <p>7 rule in our current context, you don't have to report</p> <p>8 and we're not going to --</p> <p>9 MR. LANG: Issue matching funds.</p> <p>10 COMMISSIONER HOFFMAN: Ding you for -- no,</p> <p>11 no -- we're not going to ding you for failure to report?</p> <p>12 MR. LANG: Right.</p> <p>13 COMMISSIONER HOFFMAN: Were you going to say</p> <p>14 something?</p> <p>15 COMMISSIONER DANIELS: Well, I was going to ask</p> <p>16 you, on those trigger reports, there's already in place</p> <p>17 fines and penalties if you don't report in a timely</p> <p>18 manner, that's under statute rather than ours. So, I</p> <p>19 mean, I understand what you're saying. I'm guessing</p> <p>20 that this needs to be in a different place than where it</p> <p>21 is right now because where it is right now is under</p> <p>22 matching funds and they don't exist anymore.</p> <p>23 So, if we wanted to put this wording somewhere</p> <p>24 to make an issue clearer that you think needs to be, I</p> <p>25 don't think it needs to be in this area of rule.</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">36</p> <p>1 MR. LANG: Commissioners, we can keep it in for</p> <p>2 the reasons that Commissioner Hoffman describes. The --</p> <p>3 the second-to-last sentence in (A) at the top explains</p> <p>4 why we're doing it, you know, that this is a safe</p> <p>5 harbor, effectively. We don't use that term, but it --</p> <p>6 "It's an exception. It should not be considered a</p> <p>7 contribution or expenditure for purpose of the Act or</p> <p>8 Commission rules."</p> <p>9 COMMISSIONER HOFFMAN: Right.</p> <p>10 MR. LANG: It's for our purposes. And since</p> <p>11 triggers are part of our Acts and rules, it would still</p> <p>12 apply if -- if you retain it.</p> <p>13 COMMISSIONER HOFFMAN: You mean the reports are</p> <p>14 part of the rules?</p> <p>15 MR. LANG: The trigger reports are part of our</p> <p>16 rules and our Act.</p> <p>17 COMMISSIONER HOFFMAN: Can we start calling</p> <p>18 them "reports" or something rather than "trigger</p> <p>19 reports," since they don't actually trigger --</p> <p>20 MR. LANG: Supplemental reports.</p> <p>21 COMMISSIONER HOFFMAN: There you go. That will</p> <p>22 be great.</p> <p>23 MR. LANG: So, these supplemental reports are</p> <p>24 still part of the law and still useful to voters who</p> <p>25 want to see what folks have been doing for that last</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">37</p> <p>1 month before the election, because that information is</p> <p>2 otherwise not available to them. So they are still</p> <p>3 important, these supplemental reports. And so, this</p> <p>4 does provide a safe harbor for parties from having to do</p> <p>5 those additional reports.</p> <p>6 The reason we removed it, though, is because</p> <p>7 obvi- -- what spurred this rule or this -- this</p> <p>8 explanation, this policy guideline, is the concern about</p> <p>9 issuance of matching funds. But it's still valid for</p> <p>10 the reasons you have already addressed, Commissioner.</p> <p>11 COMMISSIONER HOFFMAN: Yeah. Personally, I</p> <p>12 think we should keep it. I mean, it -- it can't hurt to</p> <p>13 tell -- allow parties to know that they don't have to</p> <p>14 report if they're within these safe harbors.</p> <p>15 MR. LANG: That's fine with staff.</p> <p>16 CHAIRPERSON FAIRMAN: Another reason, it</p> <p>17 creates curves in the road for them so they really kind</p> <p>18 of know, so candidates know what they can do and the</p> <p>19 direction they can go and all that; is that what you're</p> <p>20 saying?</p> <p>21 COMMISSIONER HOFFMAN: Yeah. Parties more than</p> <p>22 candidates.</p> <p>23 CHAIRPERSON FAIRMAN: Parties.</p> <p>24 COMMISSIONER HOFFMAN: But it's -- it basically</p> <p>25 says that, you know, as long as you're within the</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">38</p> <p>1 roadway, to use your analogy, you're not -- you're</p> <p>2 not --</p> <p>3 CHAIRPERSON FAIRMAN: Sure.</p> <p>4 COMMISSIONER HOFFMAN: -- going to get in an</p> <p>5 accident.</p> <p>6 CHAIRPERSON FAIRMAN: Sure. Well, I think</p> <p>7 that --</p> <p>8 MR. LANG: Well, you know, given --</p> <p>9 CHAIRPERSON FAIRMAN: -- makes some sense.</p> <p>10 MR. LANG: -- Commissioner Hoffman's</p> <p>11 observations, staff recommends that we keep it in place</p> <p>12 for now. We can always revisit it --</p> <p>13 COMMISSIONER HOFFMAN: Plus, don't want to</p> <p>14 waste our work, you know.</p> <p>15 MR. LANG: Right.</p> <p>16 COMMISSIONER HOFFMAN: Okay.</p> <p>17 CHAIRPERSON FAIRMAN: Any other thoughts on it?</p> <p>18 Good -- good observation.</p> <p>19 At the end of this whole thing, someone is</p> <p>20 going to have to make a motion about all this stuff, so</p> <p>21 let's start thinking about this now, okay?</p> <p>22 We're on 13, calculation of equalizing funds.</p> <p>23 MR. LANG: Commissioners, I think you will</p> <p>24 agree that we should get rid of this rule.</p> <p>25 COMMISSIONER DANIELS: Because we --</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">39</p> <p>1 MR. LANG: It describes how -- the process used</p> <p>2 for issuance of matching funds, and so I recommend that</p> <p>3 we delete this entire provision in its entirety. I</p> <p>4 guess that's redundant, but I wanted to be clear.</p> <p>5 CHAIRPERSON FAIRMAN: The entire thing in its</p> <p>6 entirety?</p> <p>7 MR. LANG: Yeah. I would like you to entirely</p> <p>8 get rid of it.</p> <p>9 CHAIRPERSON FAIRMAN: Any thoughts on that,</p> <p>10 Commissioners? We agree.</p> <p>11 COMMISSIONER RECKART: Agreed.</p> <p>12 CHAIRPERSON FAIRMAN: Louis?</p> <p>13 COMMISSIONER HOFFMAN: No choice.</p> <p>14 MR. LANG: As the Supreme Court instructs.</p> <p>15 CHAIRPERSON FAIRMAN: Okay. That takes us on</p> <p>16 to -- where does that take us to?</p> <p>17 COMMISSIONER DANIELS: Right before audits.</p> <p>18 CHAIRPERSON FAIRMAN: Article 4, audits, yes.</p> <p>19 MR. LANG: Our intention is to no longer audit</p> <p>20 non-participating candidates because of the fact that we</p> <p>21 do not issue matching funds. The -- we can still audit</p> <p>22 them for purposes of the supplemental reports, but given</p> <p>23 the expense and headache involved, we think that our</p> <p>24 time is better spent focusing on participating</p> <p>25 candidates to insure that their expenditures have been</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">40</p> <p>1 proper. But that's why we're getting rid of that.</p> <p>2 It's a policy question for you.</p> <p>3 COMMISSIONER HOFFMAN: So, if -- is this --</p> <p>4 does the rule -- does the Article on audits describe</p> <p>5 the -- or, specify the procedure -- the audit -- the</p> <p>6 things that will be audited? Or are those done in -- in</p> <p>7 our audit procedures as -- as a motion every year -- I</p> <p>8 mean, every election cycle?</p> <p>9 MR. LANG: Mr. Chair, Commissioners, it's</p> <p>10 broader than that. It does describe what we will look</p> <p>11 at, and it talks about candidates in the general.</p> <p>12 But what has happened over the years is</p> <p>13 initially we audited all candidates equally, and we --</p> <p>14 we looked at everything in traditional candidates. And</p> <p>15 over the last couple of cycles we refined that, so that</p> <p>16 with traditional candidates, our scope was focused</p> <p>17 solely on expenditures that might have triggered</p> <p>18 matching funds and the requirements related to that --</p> <p>19 those matching funds because, you know, our focus was on</p> <p>20 the Clean Elections Act and its functions and purposes.</p> <p>21 Now, that we don't issue matching funds, we</p> <p>22 recommend that -- or, we recommend that you consider</p> <p>23 getting rid of audits of traditional candidates, because</p> <p>24 our regulatory concern over the -- over their campaign</p> <p>25 finances is limited only to the supplemental reports</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">41</p> <p>1 and, you know --</p> <p>2 COMMISSIONER HOFFMAN: Well, I'm just</p> <p>3 wondering, can we audit -- would it -- if we left the</p> <p>4 rule the way it was, would the rule -- would we be in</p> <p>5 compliance with our rules, if all -- if we changed the</p> <p>6 audit procedures to simply say we want to check to make</p> <p>7 sure that people are timely filing the reports that</p> <p>8 they're obligated to file?</p> <p>9 MR. LANG: Yes, we could do that. We could</p> <p>10 continue to audit traditional candidates for that</p> <p>11 purpose.</p> <p>12 COMMISSIONER DANIELS: Mr. Chairman, doesn't</p> <p>13 the Secretary of State monitor and audit that</p> <p>14 themselves? Don't -- they don't?</p> <p>15 MR. LANG: I don't know if they do audits.</p> <p>16 They certainly deal with complaints.</p> <p>17 COMMISSIONER DANIELS: Okay.</p> <p>18 CHAIRPERSON FAIRMAN: I guess my concern -- and</p> <p>19 I think I'm agreeing with you, Commissioner Daniels, is</p> <p>20 it seems to me that we're going beyond the scope of</p> <p>21 Clean Elections and we're starting to look at auditing</p> <p>22 campaigns for reasons that are outside of our</p> <p>23 responsibilities. That would be my concern.</p> <p>24 COMMISSIONER HOFFMAN: Well, Mr. Chair, one</p> <p>25 purpose of the Clean Elections law reporting</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">42</p> <p>1 requirements was to pay matching funds, was certainly</p> <p>2 the case. Another purpose was that there was a lot of</p> <p>3 dissatisfaction at the fact that candidates could</p> <p>4 conceal their expenditures and contributions in the last</p> <p>5 period, the most important period, immediately before</p> <p>6 either the general or primary election, and they would</p> <p>7 only be required to report that under the Article 1</p> <p>8 reports the Secretary of State deals with, after the</p> <p>9 election, when it's too late for anybody to know what's</p> <p>10 going on.</p> <p>11 And so, there is a purpose. And among the --</p> <p>12 those that drafted the thing, and at -- at making sure</p> <p>13 candidates reported and reported timely. And I hate</p> <p>14 to -- I don't know if we -- I'm not sure yet whether we</p> <p>15 need it as an audit, but I do believe that there is a</p> <p>16 obligation on this Commission, because no one else has</p> <p>17 the obligation, to make sure that candidates, even</p> <p>18 participating candidates, report when they're supposed</p> <p>19 to report in a timely fashion. Whether that's done</p> <p>20 through audits or not, I'm yet unsure, but...</p> <p>21 CHAIRPERSON FAIRMAN: Commissioner Daniels.</p> <p>22 COMMISSIONER DANIELS: Mr. Chairman,</p> <p>23 Commissioner Hoffman, we don't audit until after the</p> <p>24 fact anyway. So, it's not going to be a timely report</p> <p>25 as far as letting somebody know what happened in that</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">43</p> <p>1 last election. I mean, I understand what your idea is.</p> <p>2 Your idea is that, through the election cycle, if a</p> <p>3 non-participating candidate did not report this or that,</p> <p>4 that it would be known to the public, but it's still not</p> <p>5 going to be known until after the election, because</p> <p>6 that's when we audit.</p> <p>7 COMMISSIONER HOFFMAN: Sure. But, the question</p> <p>8 is, if we don't audit and a candidate decided that they</p> <p>9 didn't want to bother with reports that they were</p> <p>10 obligated to provide, how do they get caught?</p> <p>11 MR. LANG: We've had no problem with that</p> <p>12 because their opponent brings it to our attention</p> <p>13 quickly if we don't find it. We -- we -- we monitor --</p> <p>14 COMMISSIONER HOFFMAN: Okay.</p> <p>15 MR. LANG: -- reports and if we see a problem</p> <p>16 -- remember, outside from audits, we can always do an</p> <p>17 internal complaint or just phone call or an inquiry,</p> <p>18 something more informal and --</p> <p>19 COMMISSIONER HOFFMAN: Okay.</p> <p>20 MR. LANG: -- and we've been able to -- we</p> <p>21 haven't found that anyone is just intentionally blowing</p> <p>22 off these -- these supplemental reports. We have found</p> <p>23 on occasion folks didn't do it because they thought they</p> <p>24 didn't have to or they were misinformed --</p> <p>25 COMMISSIONER HOFFMAN: Sure.</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">44</p> <p>1 MR. LANG: -- or misadvised, and we've always</p> <p>2 been able to get compliance. So it has not been an</p> <p>3 issue.</p> <p>4 COMMISSIONER HOFFMAN: So your -- so, staff's</p> <p>5 recommendation is it doesn't need to be audited because</p> <p>6 if there's a violation, it would be found and our</p> <p>7 Commission could use all the enforcement remedies</p> <p>8 available to it and that likely that would come to our</p> <p>9 attention through a means other than audits?</p> <p>10 MR. LANG: Mr. Chair, Commissioner, yes, that's</p> <p>11 right, Commissioner Hoffman.</p> <p>12 CHAIRPERSON FAIRMAN: Real good summary.</p> <p>13 COMMISSIONER HOFFMAN: Okay. That's my</p> <p>14 question on that one. Thank you.</p> <p>15 CHAIRPERSON FAIRMAN: That's a good one.</p> <p>16 We're at 402.01.</p> <p>17 MR. LANG: Actually, I think...</p> <p>18 CHAIRPERSON FAIRMAN: Is that correct?</p> <p>19 MR. LANG: Yes.</p> <p>20 COMMISSIONER DANIELS: Yes.</p> <p>21 MR. LANG: Ans this is the exact same issue.</p> <p>22 CHAIRPERSON FAIRMAN: Yes.</p> <p>23 MR. LANG: We're no longer requiring audits of</p> <p>24 non-participating candidates.</p> <p>25 COMMISSIONER HOFFMAN: Is this -- the booklet</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">45</p> <p>1 has quite a longer section. Is this just identified as</p> <p>2 the first sentence or was the remainder of the rule?</p> <p>3 MR. LANG: The remainder of the rule hasn't</p> <p>4 been changed.</p> <p>5 COMMISSIONER HOFFMAN: I see. So this was</p> <p>6 just --</p> <p>7 MR. LANG: We could have left the whole section</p> <p>8 in that rule.</p> <p>9 COMMISSIONER HOFFMAN: Okay.</p> <p>10 CHAIRPERSON FAIRMAN: But the bottom -- the</p> <p>11 balance of the rule relates to participating candidates,</p> <p>12 so it's still valid.</p> <p>13 COMMISSIONER HOFFMAN: Right. I understand.</p> <p>14 That there's just no change intended, but this is not</p> <p>15 meant to substitute for that.</p> <p>16 MR. LANG: That's right. We're not deleting</p> <p>17 anything other than what's in red.</p> <p>18 COMMISSIONER HOFFMAN: Thank you.</p> <p>19 CHAIRPERSON FAIRMAN: Okay. Let's go on to</p> <p>20 702. R2-20-702, use of campaign funds.</p> <p>21 MR. LANG: This was part of the rule regarding</p> <p>22 gaming of the system in which we said, no, you cannot</p> <p>23 get matching funds if you're working together. Now that</p> <p>24 matching funds are no longer available, the rule is no</p> <p>25 longer necessary.</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: center;">46</p> <p>1 COMMISSIONER HOFFMAN: And this is a -- part</p> <p>2 (C)(7), right?</p> <p>3 MR. LANG: Yes.</p> <p>4 COMMISSIONER DANIELS: Mr. Chairman, and I just</p> <p>5 for clarification, all these changes are just being put</p> <p>6 out for public comment, correct?</p> <p>7 MR. LANG: That's correct. None of this is</p> <p>8 final policy, right.</p> <p>9 COMMISSIONER DANIELS: Okay.</p> <p>10 CHAIRPERSON FAIRMAN: Any questions?</p> <p>11 COMMISSIONER HOFFMAN: No. Mr. Chair, I have a</p> <p>12 motion if you're --</p> <p>13 CHAIRPERSON FAIRMAN: Please. I'd love to hear</p> <p>14 it.</p> <p>15 COMMISSIONER HOFFMAN: I would like to move</p> <p>16 that we publish for public comment the changes specified</p> <p>17 in agenda Items VI(A); VI(B), which would be clarified</p> <p>18 as referring to part (C) of the (8) of the rule; VI(C);</p> <p>19 VI(D), with the correction that it is part (B) of the</p> <p>20 rule, not part (A); VI(F); VI(G); VI(H); and VI(I), with</p> <p>21 the clarification that refers to part (C)(7).</p> <p>22 COMMISSIONER DANIELS: Second.</p> <p>23 CHAIRPERSON FAIRMAN: Very well done. We have</p> <p>24 a motion and a second. All in favor of that change?</p> <p>25 (Chorus of ayes.)</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: center;">47</p> <p>1</p> <p>2 CHAIRPERSON FAIRMAN: None opposed. Thank you</p> <p>3 very much.</p> <p>4 Appreciate the effort on that, Todd in</p> <p>5 particular, and appreciate your -- Louis, your thoughts</p> <p>6 on -- on all of that as well. That's a major change for</p> <p>7 us. I mean, it really does change the scope and it</p> <p>8 changes our -- our role to a large degree, and I think</p> <p>9 this clarifies that somewhat. So I will be interested</p> <p>10 to see if there's any public information or notice comes</p> <p>11 back on any of those.</p> <p>12 So, with that, I believe our next agenda item</p> <p>13 is Item VII, which is litigation and possible update.</p> <p>14 Commissioner Daniels, I assume you read our disclaimer</p> <p>15 before I start?</p> <p>16 COMMISSIONER DANIELS: Mr. Hoffman did.</p> <p>17 CHAIRPERSON FAIRMAN: Mr. Hoffman did. Thank</p> <p>18 you very much.</p> <p>19 Todd, would you like to introduce this and</p> <p>20 we'll make some decisions following that.</p> <p>21 MR. LANG: Thank you, Mr. Chair, Commissioners.</p> <p>22 Our attorney, Tom Collins here, is to advise you on</p> <p>23 where we are with the litigation that resulted in the</p> <p>24 decision in free enterprise, and I think he has some</p> <p>25 legal advice to provide you.</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: center;">48</p> <p>1 CHAIRPERSON FAIRMAN: I would agree. With</p> <p>2 that, do we need to a motion to go into executive</p> <p>3 session?</p> <p>4 MR. COLLINS: Yes, you would.</p> <p>5 COMMISSIONER HOFFMAN: I would like to hear the</p> <p>6 litigation update and then go into executive session</p> <p>7 when the...</p> <p>8 MR. COLLINS: Well, the litigation update is</p> <p>9 effectively that one of the parties has filed their</p> <p>10 motion for attorney's fees, and that's -- that is the</p> <p>11 change in status of the litigation since we last met.</p> <p>12 COMMISSIONER HOFFMAN: Could you describe the</p> <p>13 motion, and the amount sought, and the party involved</p> <p>14 and some of that background, for the public.</p> <p>15 MR. COLLINS: The parties -- the parties</p> <p>16 that -- the parties that have filed are the McComish --</p> <p>17 what I'll refer to as the McComish Plaintiffs, that is</p> <p>18 to say, Mr. McComish, Ms. McLain, and Mr. Bouie.</p> <p>19 They're represented, as you may not know or I think you</p> <p>20 know, by the Goldwater Institute attorneys. They are</p> <p>21 seeking -- they have filed a motion to recover \$1.6</p> <p>22 million in -- in attorney's fees. And the nontaxable</p> <p>23 costs.</p> <p>24 CHAIRPERSON FAIRMAN: With that, I'd entertain</p> <p>25 a motion --</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: center;">49</p> <p>1 COMMISSIONER RECKART: I'm sorry.</p> <p>2 CHAIRPERSON FAIRMAN: Commissioner Reckart.</p> <p>3 COMMISSIONER RECKART: Sorry. Tom?</p> <p>4 MR. COLLINS: Yes, sir.</p> <p>5 COMMISSIONER RECKART: And the basis -- the</p> <p>6 basis for the request is?</p> <p>7 MR. COLLINS: Their -- their papers state that</p> <p>8 the basis for the request is the -- their calculation of</p> <p>9 the hours expended multiplied by their calculation of</p> <p>10 the rate, the attorney fee rate; and additionally, they</p> <p>11 asked for an enhancement of their rate based on -- based</p> <p>12 on their reading of the case law regarding that.</p> <p>13 In other words, Commissioner Reckart, you may</p> <p>14 know, and others to the extent that you don't -- well,</p> <p>15 what their assertion is, is that there is essentially a</p> <p>16 base level of attorney's fees and costs, and that they</p> <p>17 would seek a judicial enhancement of that amount, which</p> <p>18 is what brings it ultimately to the \$1.6 million number.</p> <p>19 COMMISSIONER HOFFMAN: And --</p> <p>20 COMMISSIONER RECKART: Okay.</p> <p>21 CHAIRPERSON FAIRMAN: Other questions?</p> <p>22 COMMISSIONER HOFFMAN: So, if I could ask some</p> <p>23 questions just to clarify.</p> <p>24 So, this is attorney's fees that the Goldwater</p> <p>25 Institute spent. Were the Plaintiff's obligated to pay</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">50</p> <p>1 these attorney's fees to their client, do you know, or</p> <p>2 was this done on a pro bono basis, in a sense?</p> <p>3 MR. COLLINS: I think, frankly, Commissioner</p> <p>4 Hoffman, I would -- I would say that that is a -- a</p> <p>5 point that it -- that actually warrants discussion in</p> <p>6 executive session because of its impact on our</p> <p>7 litigation potentially, and --</p> <p>8 COMMISSIONER HOFFMAN: Well, have they</p> <p>9 publically announced or said in their papers whether --</p> <p>10 which this case was?</p> <p>11 MR. COLLINS: What they have -- what their</p> <p>12 papers -- let me say, literally, what their papers say.</p> <p>13 COMMISSIONER HOFFMAN: Yeah.</p> <p>14 MR. COLLINS: Their papers say that the fees</p> <p>15 and services were provided at no charge. Their papers</p> <p>16 state that the Goldwater Institute shall receive those</p> <p>17 monies. But, also, their papers state that -- that</p> <p>18 that -- that the McComish Plaintiffs do not have an</p> <p>19 obligation, other than moral, to return those fees --</p> <p>20 recovery, I should say, to the Goldwater Institute. I</p> <p>21 think that's -- that's a literal representation --</p> <p>22 COMMISSIONER HOFFMAN: Okay.</p> <p>23 MR. COLLINS: -- of what their papers stated.</p> <p>24 COMMISSIONER HOFFMAN: And the money that</p> <p>25 they're seeking is from the Commission, and the impact</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">51</p> <p>1 of that would be to reduce the amount of funds that we</p> <p>2 are able to return to the State General Fund, correct?</p> <p>3 MR. COLLINS: Commissioner Hoffman, again, that</p> <p>4 is an issue that is -- I would recommend --</p> <p>5 COMMISSIONER HOFFMAN: Oh, I'm not saying that</p> <p>6 we're not going to have an executive session. I just</p> <p>7 want to disclose to the public the nature of the request</p> <p>8 and the -- and -- and the context in which we're having</p> <p>9 the executive session, and then the discussion of</p> <p>10 whether we -- what we do with the request, I just want</p> <p>11 to know the impact of whatever we decide to do.</p> <p>12 MR. COLLINS: I cannot -- I -- I understand</p> <p>13 your question to be: Can the -- will this directly, for</p> <p>14 some reason, come out of the Clean Elections fund; and,</p> <p>15 therefore --</p> <p>16 COMMISSIONER HOFFMAN: I see.</p> <p>17 MR. COLLINS: -- will it not -- would the money</p> <p>18 that would not be available as excess funds to be</p> <p>19 returned to the General Fund.</p> <p>20 COMMISSIONER HOFFMAN: Right. Whatever amount</p> <p>21 the Goldwater Institute were to get from the -- from</p> <p>22 this request.</p> <p>23 MR. COLLINS: And the answer to that question,</p> <p>24 frankly, I -- I --</p> <p>25 CHAIRPERSON FAIRMAN: Well, I think --</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">52</p> <p>1 MR. COLLINS: I'm -- I would recommend, again,</p> <p>2 to answer that question, but --</p> <p>3 COMMISSIONER HOFFMAN: Is that a question that</p> <p>4 will require you to make a legal opinion as to where the</p> <p>5 funds come from?</p> <p>6 CHAIRPERSON FAIRMAN: Yes.</p> <p>7 MR. COLLINS: Absolutely.</p> <p>8 COMMISSIONER HOFFMAN: Okay. Thank you.</p> <p>9 MR. COLLINS: Yes.</p> <p>10 COMMISSIONER HOFFMAN: I didn't realize that</p> <p>11 that was the case. I wanted to -- you know, if that's</p> <p>12 the case, I -- I withdraw the question. That's --</p> <p>13 there's no problem.</p> <p>14 MR. COLLINS: I'm sorry I didn't make that</p> <p>15 clear. Yes, absolutely.</p> <p>16 COMMISSIONER HOFFMAN: So, the -- the -- the --</p> <p>17 the request is from the State of -- that the State of</p> <p>18 Arizona pay this amount, correct?</p> <p>19 MR. COLLINS: The -- the moving papers -- well,</p> <p>20 the legal opinion -- I would have to offer a legal</p> <p>21 opinion about that because that -- because I would have</p> <p>22 to.</p> <p>23 COMMISSIONER HOFFMAN: Let me withdraw that as</p> <p>24 well.</p> <p>25 So, the -- the other question that I wanted to</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">53</p> <p>1 know is whether -- what is the legal statute under which</p> <p>2 they're requesting fees?</p> <p>3 MR. COLLINS: It's 42 U.S.C.A 1983 and 1988.</p> <p>4 COMMISSIONER HOFFMAN: Okay.</p> <p>5 CHAIRPERSON FAIRMAN: With that, I'd like to --</p> <p>6 I'd entertain a motion to go into executive session.</p> <p>7 COMMISSIONER HOFFMAN: I move to go into</p> <p>8 executive session for the purpose of consulting our</p> <p>9 attorneys concerning the negotiations with the Goldwater</p> <p>10 Institute regarding their fee request and -- and --</p> <p>11 and -- and legal advice pertinent thereto.</p> <p>12 CHAIRPERSON FAIRMAN: Is there a second?</p> <p>13 COMMISSIONER DANIELS: Second.</p> <p>14 CHAIRPERSON FAIRMAN: Commissioner Daniels. We</p> <p>15 have a first and a second, motion and a second. All in</p> <p>16 favor of executive session signify by saying, "aye."</p> <p>17 (Chorus of ayes.)</p> <p>18</p> <p>19 CHAIRPERSON FAIRMAN: Ladies and gentlemen,</p> <p>20 we're going to go into executive session for a short</p> <p>21 while. We will return following that for the public</p> <p>22 comment, so please feel free to -- to hang around in the</p> <p>23 lobby and we'll get back to you as soon as we can.</p> <p>24 (Whereupon the public retires from the meeting</p> <p>25 room.)</p> <p style="text-align: center;">Miller Certified Reporting</p>

<p style="text-align: right;">54</p> <p>1</p> <p>2 (Whereupon the Commission is in executive</p> <p>3 session from 10:27 a.m. until 11:12 a.m.)</p> <p>4</p> <p>5 * * * * *</p> <p>6</p> <p>7 (Whereupon all members of the public are</p> <p>8 present and the Commission resumes in general session.)</p> <p>9</p> <p>10 CHAIRPERSON FAIRMAN: I'd like to call the</p> <p>11 meeting back to order. And with that, were there any</p> <p>12 motions or discussions regarding our executive session?</p> <p>13 COMMISSIONER HOFFMAN: Just a moment.</p> <p>14 CHAIRPERSON FAIRMAN: Thank you all, members of</p> <p>15 the public, for being patient.</p> <p>16 (Whereupon a discussion was held off the</p> <p>17 record.)</p> <p>18</p> <p>19 CHAIRPERSON FAIRMAN: Okay. Would anyone like</p> <p>20 to make a motion regarding Item VII?</p> <p>21 COMMISSIONER DANIELS: Mr. Chairman, I move</p> <p>22 that Mr. Collins be authorized to negotiate settlement</p> <p>23 of fee claims of the Goldwater Institute clients as</p> <p>24 discussed in executive session, and that Mr. Lang is</p> <p>25 authorized to sign for the Commission and consistent</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">55</p> <p>1 with our discussions and negotiation -- priorities?</p> <p>2 COMMISSIONER HOFFMAN: Positions.</p> <p>3 COMMISSIONER DANIELS: -- positions.</p> <p>4 CHAIRPERSON FAIRMAN: We have a motion. Do we</p> <p>5 have a second?</p> <p>6 COMMISSIONER DANIELS: You better second.</p> <p>7 COMMISSIONER RECKART: So moved.</p> <p>8 CHAIRPERSON FAIRMAN: Thank you very much. We</p> <p>9 have a motion and second. All in favor signify by</p> <p>10 saying, "aye."</p> <p>11 (Chorus of ayes.)</p> <p>12</p> <p>13 CHAIRPERSON FAIRMAN: All opposed? None.</p> <p>14 Carries unanimously. Thank you very much.</p> <p>15 COMMISSIONER HOFFMAN: Thank you.</p> <p>16 CHAIRPERSON FAIRMAN: Next step is our public</p> <p>17 comment and that's what we're all waiting for. So, is</p> <p>18 there any members of the public that would like to</p> <p>19 comment on today's meeting, any side of it? Any section</p> <p>20 of it?</p> <p>21 With that, I would entertain a motion for</p> <p>22 adjournment.</p> <p>23 COMMISSIONER DANIELS: So moved.</p> <p>24 COMMISSIONER HOFFMAN: So moved.</p> <p>25 CHAIRPERSON FAIRMAN: Do I have a second to the</p> <p style="text-align: center;">Miller Certified Reporting</p>
<p style="text-align: right;">56</p> <p>1 motion?</p> <p>2 COMMISSIONER RECKART: Second.</p> <p>3 CHAIRPERSON FAIRMAN: We -- all in favor?</p> <p>4 (Chorus of ayes.)</p> <p>5</p> <p>6 CHAIRPERSON FAIRMAN: We're adjourned. Thank</p> <p>7 you all very much.</p> <p>8 Again, I apologize for my tardiness.</p> <p>9 (Whereupon the proceeding concludes at 11:15</p> <p>10 a.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Miller Certified Reporting</p>	<p style="text-align: right;">57</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, Angela Furniss Miller, Certified Reporter,</p> <p>4 do hereby certify that the foregoing pages numbered 1</p> <p>5 through 56, inclusive, constitute a full and accurate</p> <p>6 printed record of my stenographic notes taken at said</p> <p>7 time and place, all done to the best of my skill and</p> <p>8 ability.</p> <p>9 DATED, at Phoenix, this 25th day of July,</p> <p>10 2011.</p> <p>11</p> <p>12</p> <p>13</p> <p>14 <u>Angela Furniss Miller, RPR</u></p> <p>15 Certified Reporter (AZ50127)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Miller Certified Reporting</p>